

No. 23-55147; No. 23-55149

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADAN ORTIZ, an individual, and on behalf of all others similarly situated,
Plaintiff-Appellee,

vs.

RANDSTAD INHOUSE SERVICES, LLC, ET AL.,
Defendants-Appellants.

APPELLANTS' REPLY IN SUPPORT OF MOTION TO STAY
[Oral Argument currently scheduled for December 4, 2023]

FROM A DECISION OF THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
HON. TERRY J. HATTER, JR., CASE NO. 5:22-CV-01399 TJH

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REPLY IN SUPPORT OF MOTION TO STAY APPELLATE PROCEEDINGS

Plaintiff-Appellee Adan Ortiz (“Ortiz”) dismisses the relevance of an upcoming Supreme Court decision (if not two) that will clarify the scope of the FAA exemption at the center of this appeal. But Ortiz does not have a crystal ball. His opposition to staying these appellate proceedings rests on unfounded assumptions about what the Supreme Court will or will not decide, and then insists this Court should proceed without the benefit of the high court’s forthcoming guidance. The only efficient course, however, is to stay these proceedings so the parties can directly address the issue(s) the Supreme Court will decide.

None of Ortiz’s arguments against a stay has merit. Notably, Ortiz does not identify any particular prejudice he will suffer from a stay. Instead, Ortiz dismisses the relevance of *Bissonnette v. LePage Bakeries Park St*, 2023 WL 6319660 (U.S., Sept. 29, 2023, No. 23-51) because it involves a bakery that is “plainly” not in the transportation industry. Opp. at 1. But this misses the point. The issue in *Bissonnette* is whether a class of workers must be employed by a company in the transportation industry to be exempt from the FAA. Motion at p. 4. The Supreme Court will most certainly provide guidance on the application of the section 1 exemption to businesses other than bakeries, and the principles it articulates will help this Court to decide whether the business where Ortiz worked qualifies as a business in the “transportation industry.” Ortiz cannot just *assume* that GXO is in

the “transportation industry” because the Supreme Court has yet to define that term in *Bissonnette*. Nor can he *assume* that he will be a “transportation worker” once *Bissonnette* further addresses and clarifies that term.

Further, nothing in the record shows that the GXO entity where Ortiz worked engages in transportation. Rather, “GXO’s business consists of warehouse and distribution facilities, like those to which Mr. Ortiz was assigned.” 2-ER-70, ¶4. “Neither of the [Bloomington or Colton] Facilities employ transportation workers who move freight to and from these Facilities.” 2-ER-66, ¶5. Rather, the goods “are prepared for transport by a non-GXO employee,” and “have been transported to the Facilities by a non-GXO employee.” *Id.* Therefore, if the *Bissonnette* decision ultimately holds a class of workers must be employed by a company in the transportation industry, that holding could be completely dispositive here.

In short, it is inaccurate (or at best, premature) for Ortiz to dismiss *Bissonnette*’s relevance.

Ortiz also downplays the relevance of *Carmona Mendoza v. Domino’s Pizza, LLC*, 73 F.4th 1135 (9th Cir. 2023) (petition for writ of certiorari filed October 23, 2023). He tries to distinguish *Carmona* by, again, making an unfounded factual assumption—that (unlike the Domino’s ingredients in *Carmona*) the goods he handled were in an unbroken stream of interstate

commerce. As previously explained, the record does not support his assumption.

See ARB 6-17.

But irrespective of that supposed distinction, if the Supreme Court grants review, *Carmona* is certain to provide guidance on the scope of the Section 1 exemption that will be useful beyond the specific factual scenario before it—just as *Southwest Airlines Co. v. Saxon*, 142 S.Ct. 1783 (2022) did for cases not involving cargo loaders working for airlines. If *Carmona* holds that drivers who actually deliver goods are not exempt under Section 1, it seems very unlikely that workers like Ortiz, who simply handle goods inside a warehouse, would qualify for the exemption.

Accordingly, Appellants respectfully request that this Court vacate the oral argument currently scheduled for December 4, 2023, and order a stay of appellate proceedings pending the Supreme Court’s decisions in *Bissonnette* and *Carmona* (should it grant certiorari in the latter). This Court should further order the parties to provide supplemental briefing following the Supreme Court’s decision(s).

DATED: November 8, 2023

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 27(D)(2)

Pursuant to Circuit Rule 27(d)(2), Appellants hereby certify that the text of this Reply is double spaced, uses a proportionately spaced typeface, and contains a total of 632 words, based on the word count program in Microsoft Word.

Respectfully submitted,

DATED: November 8, 2023

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